

REMARKS

Rejection of Claims 1, 3-5, 8, 9, 12, 20-26, 29-30, 43-44 and 46 Under 35 U.S.C. § 102(e)

The Examiner has rejected Claims 1, 3-5, 8, 9, 12, 20-26, 29-30, 43-44 and 46 under 35 U.S.C. § 102(e), contending that these claims are anticipated by U.S. Patent No. 6,743,492, as evidenced by Beaupre et al. for the reasons previously of record. In reply to Applicant's last filed response, which submitted a Declaration of the inventors under 37 CFR 1.131, the Examiner stated that the Declaration was insufficient to overcome the rejection because U.S. Patent No. 6,743,492 was alleged to claim the rejected invention. The Examiner stated that if the cited reference and the present application are not commonly owned, then the reference can only be overcome by establishing priority through interference proceedings (MPEP 2305[sic]).

In response to this rejection, Applicant submits herewith a Showing of Priority pursuant to 37 CFR 41.202(d)(1), which as set forth in MPEP 2305, is filed to overcome a rejection based on 35 U.S.C. 102(a) or 102(e) when an affidavit is not permitted under 37 CFR 1.131(a)(1) because the applicant is claiming interfering subject matter. The Showing of Priority provides evidence of actual reduction to practice of the presently claimed invention at a date several months prior to the earliest priority filing date of U.S. Patent No. 6,743,429 (*i.e.*, December 24, 1999), which is believed to be sufficient to establish that Applicant would prevail on priority if an interference is declared and the opponent does not oppose the showing, as required by 37 CFR 41.202(d)(1).

Therefore, Applicants submit that U.S. Patent No. 6,743,429 is not an effective reference against the present claims, and respectfully request the Examiner to withdraw the rejection under Claims 1, 3-5, 8, 9, 12, 20-26, 29-30, 43-44 and 46 under 35 U.S.C. § 102(e) and recommend interference to the Board of Patent Appeals and Interferences.

Rejection of Claims 1, 6-7, 10 and 13-14 Under 35 U.S.C. § 103

The Examiner has rejected Claims 1, 6-7, 10 and 13-14 under 35 U.S.C. § 103, contending that these claims are unpatentable over U.S. Patent No. 6,743,429 as evidenced by Beaupre et al. for the reasons previously of record. Differences between these claims and the cited references noted by the Examiner are deemed by the Examiner to be optimization of dosages and route of administration that are within the purview of those of skill in the art. In

reply to Applicant's last filed response, which submitted a Declaration of the inventors under 37 CFR 1.131, the Examiner stated that the Declaration was insufficient to overcome the rejection because U.S. Patent No. 6,743,492 was alleged to claim the rejected invention. The Examiner stated that if the cited reference and the present application are not commonly owned, then the reference can only be overcome by establishing priority through interference proceedings (MPEP 2305[sic]).

In response to this rejection, Applicant submits herewith a Showing of Priority pursuant to 37 CFR 41.202(d)(1). The Showing of Priority provides evidence of actual reduction to practice of the presently claimed invention at a date several months prior to the earliest priority filing date of U.S. Patent No. 6,743,429 (*i.e.*, December 24, 1999), which is believed to be sufficient to establish that Applicant would prevail on priority if an interference is declared and the opponent does not oppose the showing, as required by 37 CFR 41.202(d)(1). Therefore, Applicants submit that U.S. Patent No. 6,743,429 is not an effective reference against the present claims. As previously argued, Beaupre et al. is cited only for the teaching that PC₂₀FEV1 is the concentration of provoking agent that causes a 20% fall in FEV1 to characterize the clinical state of an asthmatic. Accordingly, Beaupre et al. does not teach or suggest the presently claimed invention.

In view of the foregoing remarks, the Examiner is respectfully requested to withdraw the rejection of Claims 1, 6-7, 10 and 13-14 under 35 U.S.C. § 103.

Applicants have responded in full to all of the remaining rejections as set forth in the May 5 Office Action. In the event that the Examiner has any questions regarding Applicant's position, the below-named agent may be reached at (303) 863-9700.

Respectfully submitted,
SHERIDAN ROSS P.C.

By: /Angela Dallas Sebor/
Angela Dallas Sebor
Registration No. 42,460
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: June 5, 2007